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October 15, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-338

Dear Ms. Dortch:

On October 11, 2002 Pete Martin, Keith Milner, Bob Blau and the undersigned, all from BellSouth, and Bill Taylor from NERA, also representing BellSouth, met with Matt Brill and Jason Scism from Commissioner Abernathy's office in connection with the above referenced proceeding. During this meeting, BellSouth discussed the need for switching UNE relief as follows:

1) Switching should be removed from the UNE list for all residential and business customers.
2) No new UNE-P should be provided from the effective date of the order.
3) A brief transition for the current UNE-P embedded base is appropriate.
4) BellSouth will continue to make switching available in all areas at a market price.

The attached material was used during this meeting to explain the evidence regarding the wide availability of alternatives to BellSouth's switching UNE. BellSouth also explained that it has a reliable, efficient, and timely hot cut process, scalable to meet increased demands.

I am electronically filing this notice and the accompanying attachment and request that you associate this notice with the record of the proceeding listed above.

Sincerely,

W. W. Jordan

Attachment

cc: Matt Brill Jason Scism

# The Need for Switching UNE Relief

BellSouth Corporation

October 11, 2002

# Legal Basis for Switching Relief

- The Commission must consider, at a minimum, whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." **–1996 Act, §252(d)(2)**
- "I do not believe the Commission has met its burden of showing that failure to unbundle switching would impair CLECs from providing service in the densest areas of the largest markets. Thus, I would have been prepared to leave switching off the unbundling list for the provision of service to all customers in access Zone 1, regardless of their size or type, and regardless of whether the incumbent is providing the 'extended link' or EEL." **– Chairman Powell, dissenting in part, 1999 UNE Remand Order**
- The Commission seeks "to fashion a more targeted approach to unbundling that identifies more precisely the impairment facing requesting carriers," and sought "comment on whether and how to take geography into account in the unbundling analysis" and "how to read the Act on a prospective basis." **– 2001 Triennial UNE Review NPRM**
- The legal basis for the impairment analysis espoused by the Chairman in 1999 and the granular approach outlined in the 2001 NPRM are confirmed because the 1999 UNE Remand Order never explained "why the record supports a finding of material impairment where the element in question—though not literally ubiquitous—is significantly deployed on a competitive basis." **– U.S. Court of Appeals, USTA v. FCC 2002 (remanding 1999 UNE Remand Order)**

# What Relief is Needed for Switching

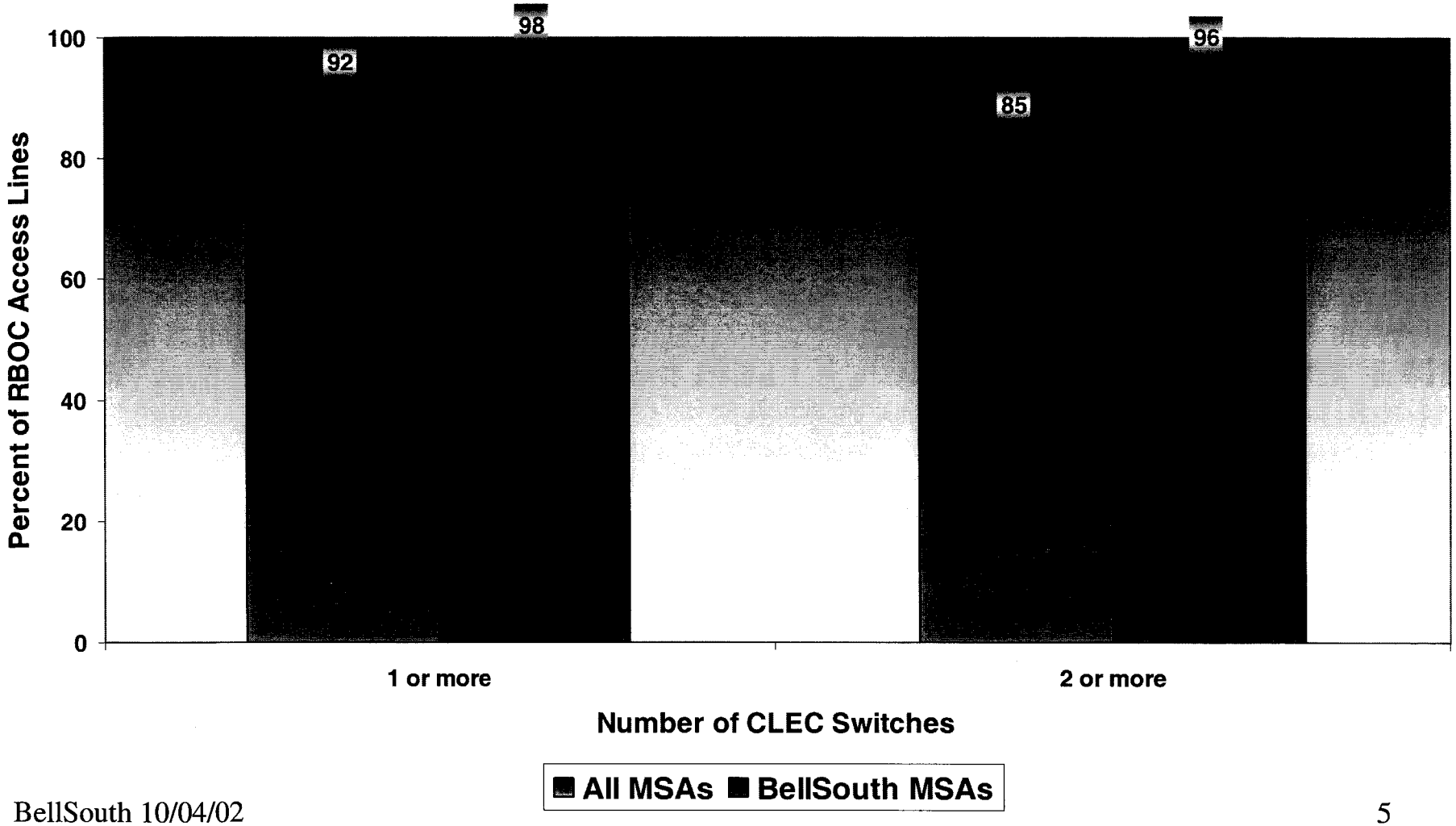
- Per the Time Warner Telecom (TWTC)-BellSouth framework, switching should be removed from the UNE list everywhere with regards to business end-user customers
  - Rationale: "CLECs are not impaired…due to the availability of competitive alternatives" TWTC-BellSouth ex parte to FCC
- Switching associated with residential customers should also be removed from the UNE list, as the same switches are used to serve both residence and business customers
- Transition for all UNE switching
  - No new UNE-P from effective date of FCC Order forward
  - Brief transition period for embedded base of UNE-P (no longer than 6 months)
  - BellSouth would continue to make market-priced switching available in all areas

# Evidence Regarding Marketplace Conditions for Switching is Probative of No Impairment

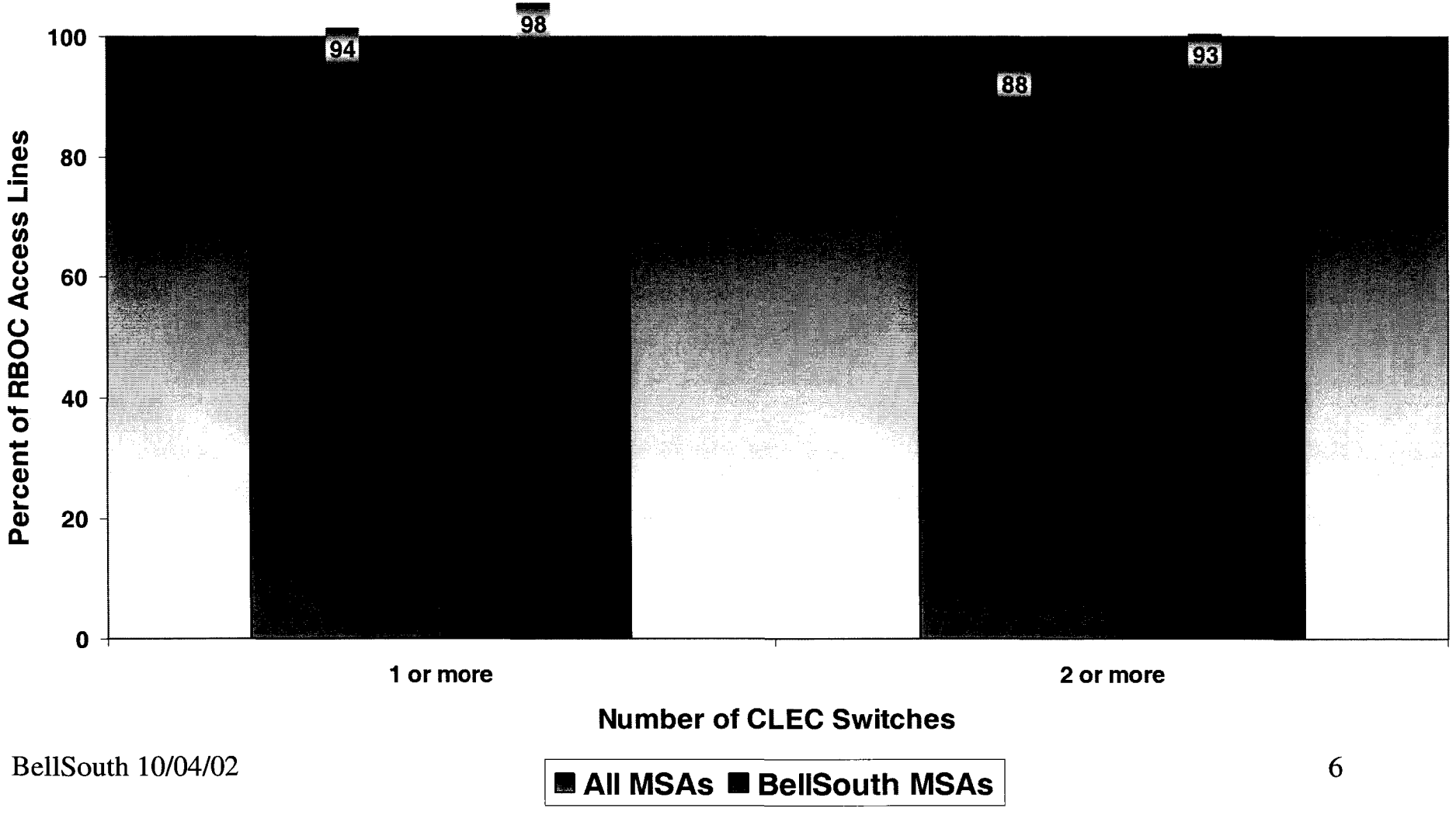
- Approximately 1300 *known* competitive circuit switches nationwide
- CLEC switches are serving actual local customers in wire centers containing approximately 86 percent of RBOC access lines
- CLEC switches serve no fewer than 16 million local lines, and likely closer to 23 million local lines, a more than three-fold increase since 1998

(Source: UNE Fact Report 2002)

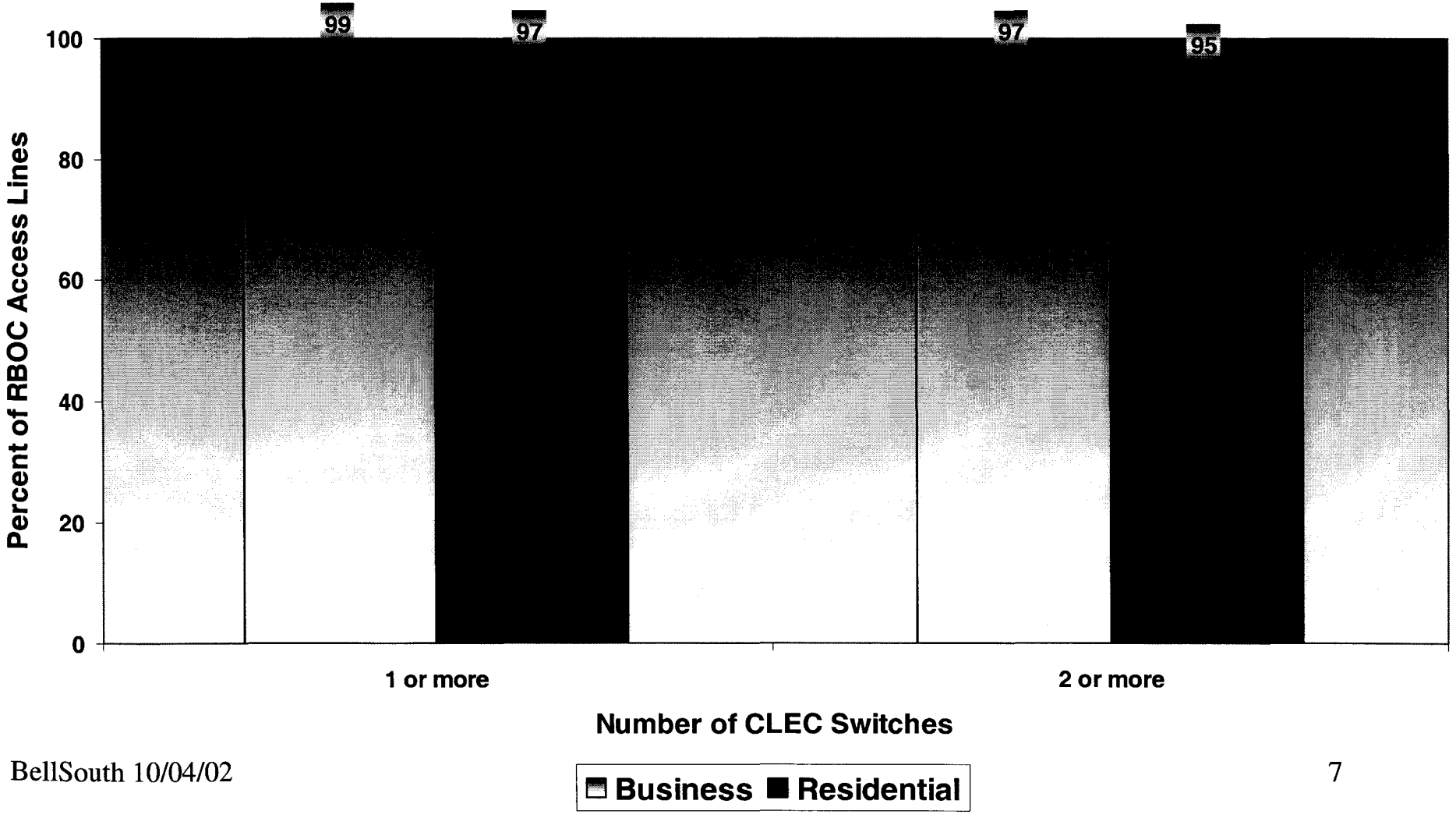
# Percent of RBOC Access Lines in Wire Centers Served by CLEC Switches (in MSAs Ranked 1-50 Nationally)



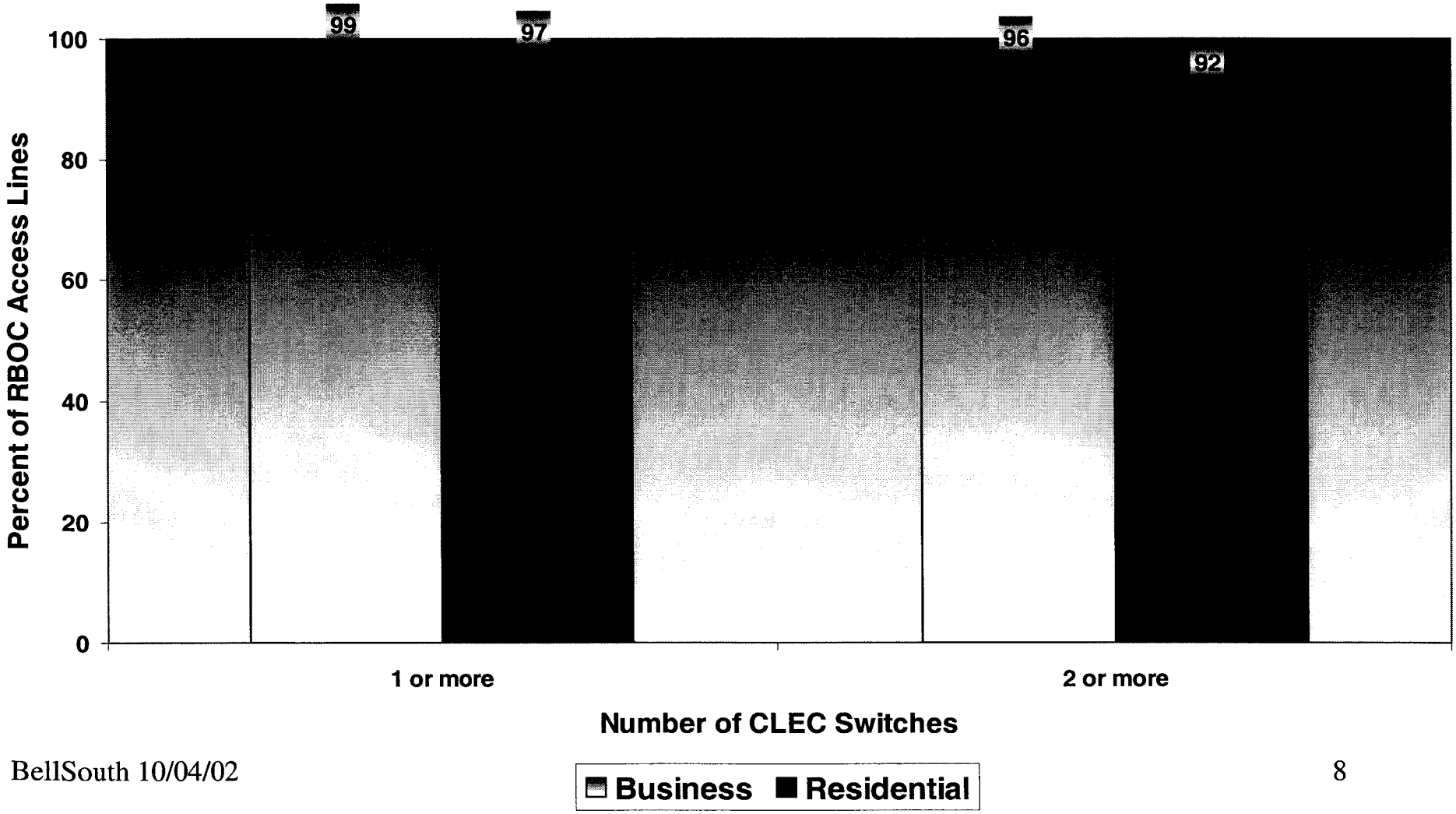
# Percent of RBOC Access Lines in Wire Centers Served by CLEC Switches (in MSAs Ranked 51-100 Nationally)



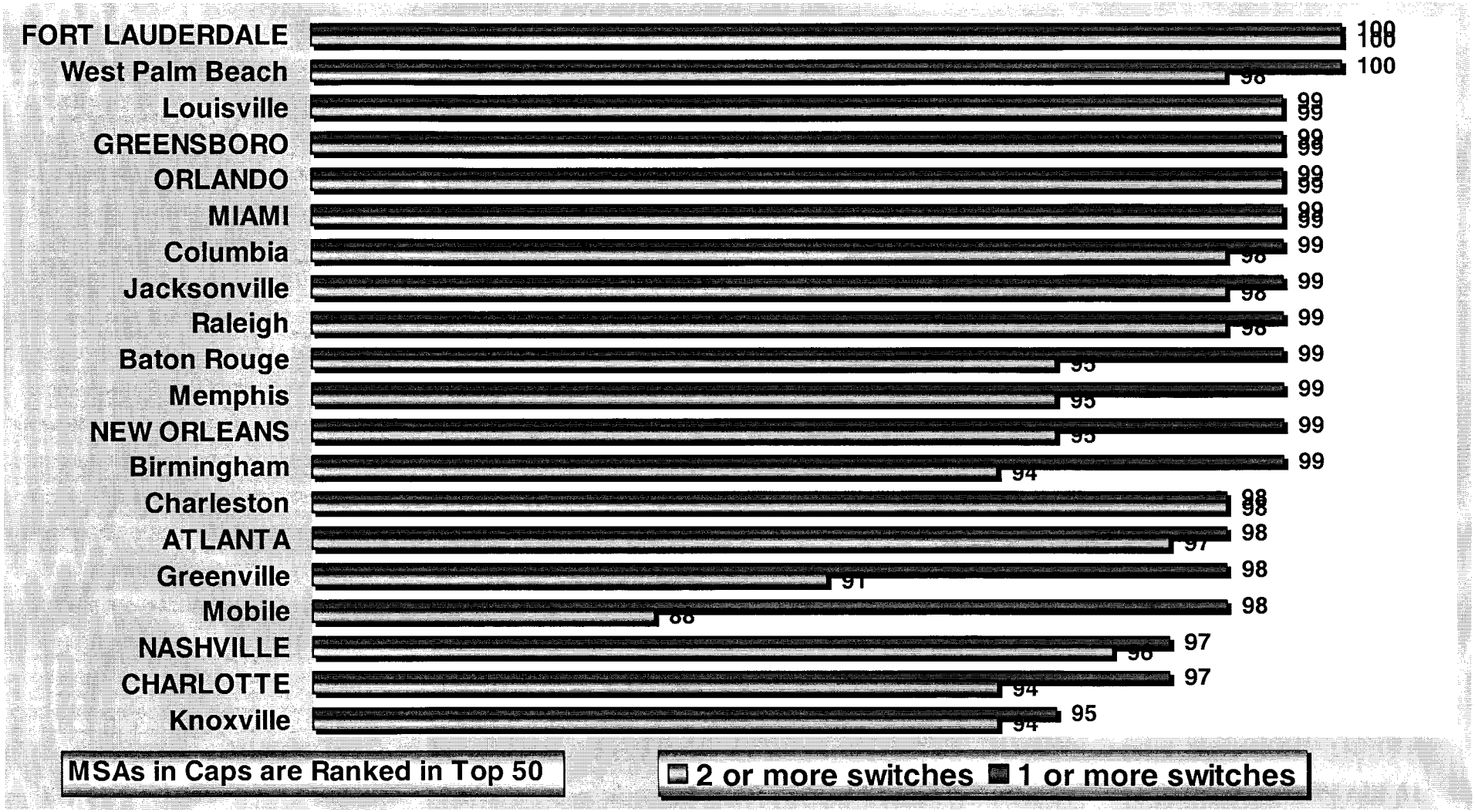
# Percent of RBOC Access Lines in Wire Centers Served by CLEC Switches, by Customer Type
## (BellSouth MSAs Ranked in 1-50 Nationally)



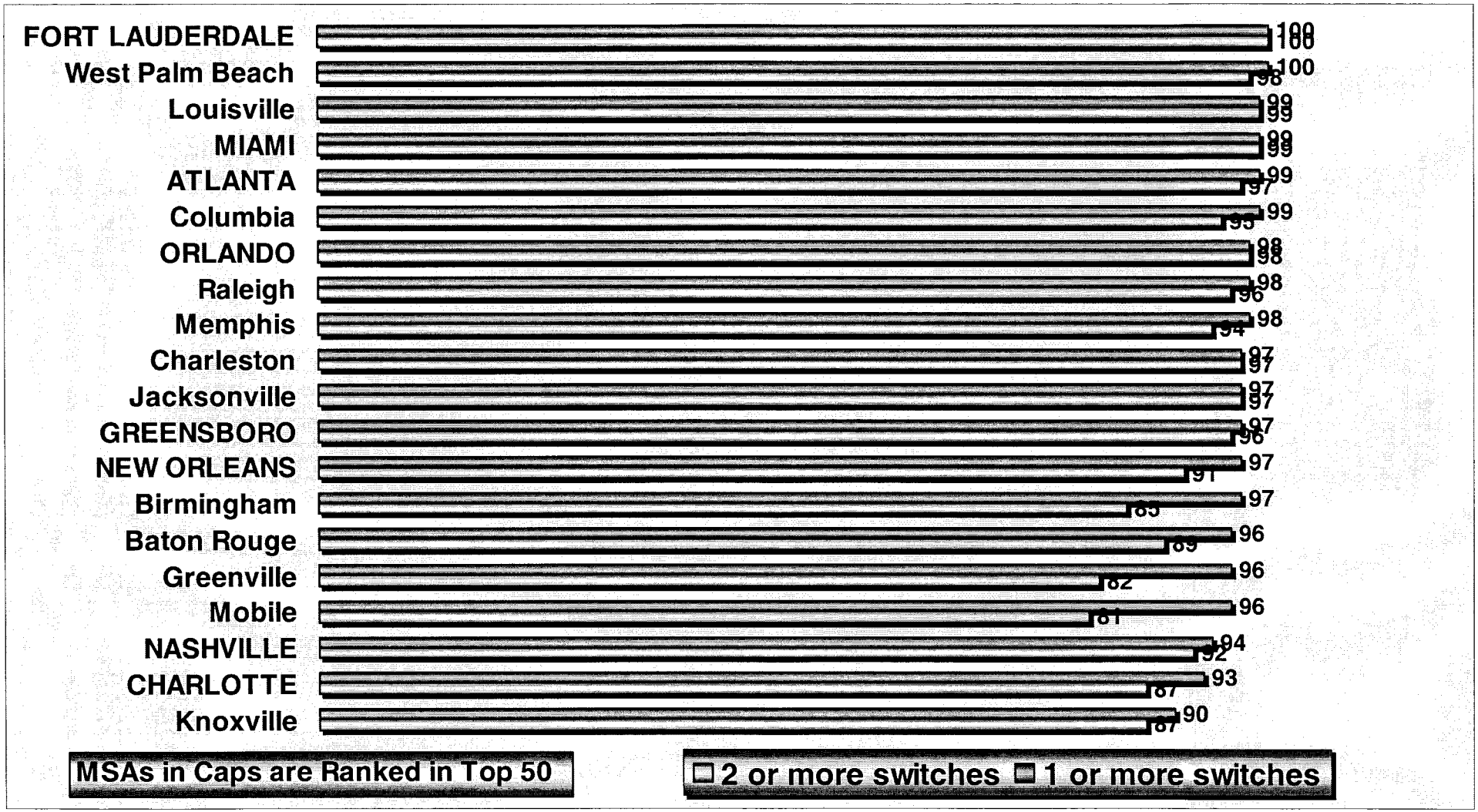
# Percent of RBOC Access Lines in Wire Centers Served by CLEC Switches, by Customer Type
## (BellSouth MSAs Ranked in 51-100 Nationally)



# Percent of RBOC Business Access Lines in Wire Centers Served by CLEC Switches (BellSouth MSAs Ranked in Top 100 Nationally)



# Percent of RBOC Residential Access Lines in Wire Centers Served by CLEC Switches (BellSouth MSAs Ranked in Top 100 Nationally)



# Even in MSAs with Fewer Competitive Switches, Evidence Regarding Marketplace Conditions Proves that CLECs Can Deploy or Access Switches

- What CLECs have said in sworn testimony before state commissions regarding the reach of CLEC switches:
  - "AT&T offers local exchange service in Tennessee via 4ESS switches, which function primarily as long distance switches, and 5ESS switches, which act as adjuncts to the 4ESS switches. AT&T has the ability to connect virtually any qualifying local exchange customer in Tennessee to one of these switches through AT&T's dedicated access services." [emphasis added] (AT&T witness in TN Docket No. 00-00079)
  - "It is important to note that in some cases, the AT&T switch serving a LATA is not physically located in the LATA." (AT&T witness in TN Docket No. 00-00079)
  - "ICG, like many new entrant CLECs, generally deploys its individual switches to cover a large geographic area served by a common transport network. The advent of fiber optic technologies and multi-function switching platforms have, in many cases, allowed carriers like ICG to serve an entire statewide or LATA-wide customer base from a single switch platform. Likewise, the ability to aggregate unbundled loops from collocations within a number of ILEC central offices while transporting that traffic to a single location allows these carriers to originate, switch and terminate traffic between callers located many miles apart with a single switch." [emphasis added] (ICG witness in NC Docket No. P-582, Sub 6)
  - "WorldCom uses state-of-the-art equipment and design principles based on technology available today. Their local network has been built within the past few years using optical fiber rings with SONET transmission, which makes it possible to access and serve a large geographic area from a single switch." [emphasis added] (WorldCom witness in GA Docket No. 11901-U)

(Source: BellSouth's Reply Comments, CC Docket No. 01-338, at p. 21-22)

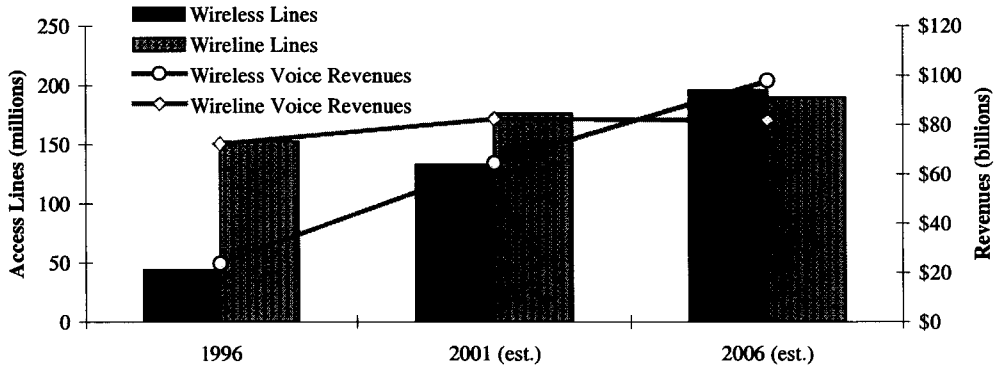
# Even in MSAs with Fewer Competitive Switches, Evidence Regarding Marketplace Conditions Proves that CLECs Can Deploy or Access Switches

- Technological innovation in switch design and reduced costs of traffic back-haul facilitate a requirement for fewer CLEC switches
- It is now possible to place remote switches up to 2000 miles from host switches
- The cost of switches has declined dramatically over the last decade, and continues to decline, while the scalability and functionality of new switches continues to increase

(Source: Charles L. Jackson, Ph.D., *CLEC's Choices for Local Switching,* filed with BellSouth's Reply Comments, CC Docket No. 01-338)

# Relevant and Significant Intermodal Competition Continues to Grow

**Figure 7. Wireless vs. Wireline Growth**




*Source:* JP Morgan H&Q. *See* Appendix M.

- Growth in wireless subscribers and revenue outpaces wireline growth
- Wireless traffic is switched traffic – competitive with wireline switched traffic
- More than 950 circuit switches deployed nationwide by wireless carriers not affiliated with Bell companies

  (Source: UNE Fact Report 2002, filed with BellSouth's Reply Comments, CC Docket No. 01-338)

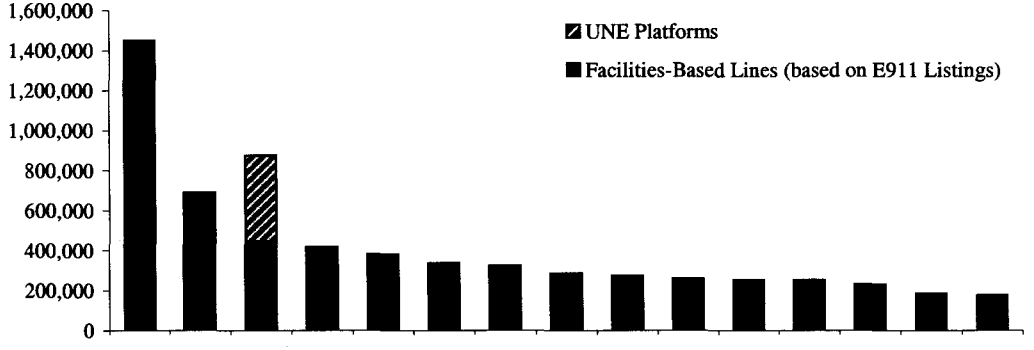
# Relevant and Significant Intermodal Competition Continues to Grow

- Cable companies are beginning to chalk up impressive results in signing up telephone subscribers
- Cable companies are luring customers away from local phone companies
- Two cable industry leaders, AT&T Broadband and Cox, have signed up over 1.7 million local telephone customers and are adding new ones at a rate of more than 60,000 a month
- Other industry leaders plan to launch cable phone service next year using a less expensive Internet-based technology

  (Source: Wall Street Journal, September 5, 2002)
- USTA v. FCC: Commission must consider relevance of competition coming from cable and other providers (in context of unbundling advanced/broadband services)

# CLECs Do Not Need UNE-P

**Figure 2. Use of UNE Platforms by Top 15 Switch-Based CLECs Other Than AT&T and WorldCom**




Top 15 CLECs represented include: Allegiance Telecom, Cablevision Lightpath, Choice One, Cox, Electric Lightwave, Focal Communications, ICG, Intermedia, McLeodUSA, Mpower, Net2000, RCN, Sprint, WinStar, and XO.

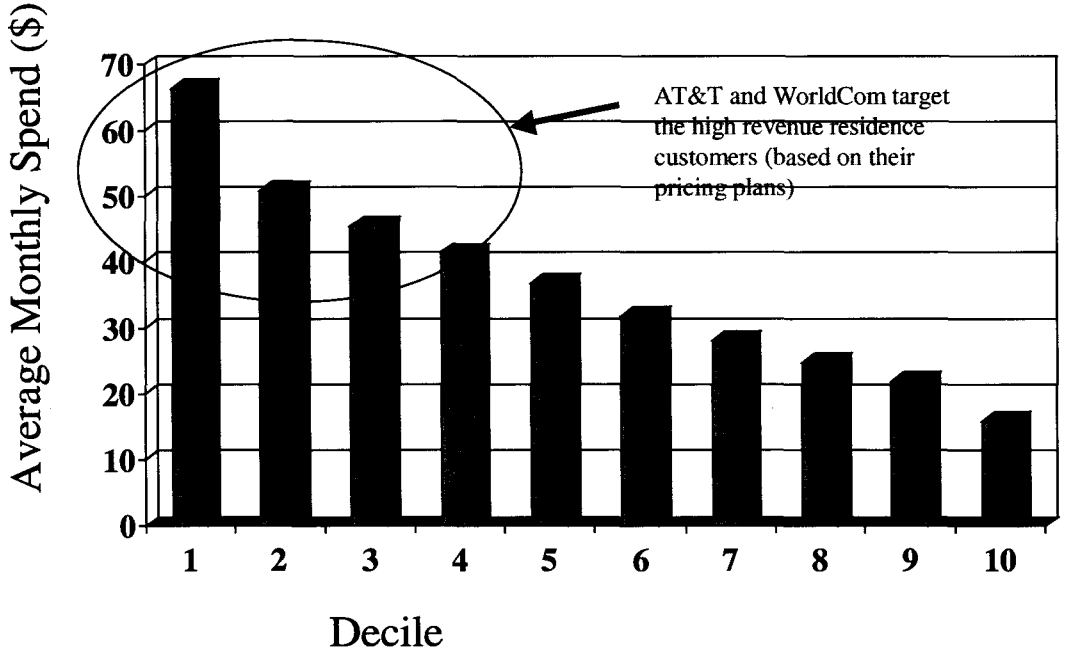
(Source: UNE Fact Report 2002, filed with BellSouth's Reply Comments CC Docket No. 01-338)

- What CLECs are actually doing provides compelling evidence that facilities-based CLECs do not need UNE-P
- Many switch-Based CLECs do not use UNE-P

# No Probative Evidence that Any Change in Residential UNE Switching Availability Will Make UNE-P Unattractive for CLECs Due to Low Residential Basic Rates

- Argument ignores fact that the average residential customer generates $35-40 in revenue
- Argument ignores availability of resale option for low revenue customers
- Argument ignores fact that ILECs already have to deal with the subsidy-laden social pricing policies implemented by the states over previous decades; CLECs can also serve all customer types if they so choose
- Argument ignores fact that CLECs can pick and choose the more lucrative customers (as they do today) – average revenue per customer lost = $45
- Argument ignores fact that switches deployed for serving business customers can also service residential customers at minimal additional expense

# UNE-P Providers Target High Revenue Residence Customers



# Pricing UNEs

- Network elements should not be treated as UNEs (i.e., priced at TELRIC) if CLECs are not impaired, competitive alternatives available
- If CLECs are deterred from entering by residential local service rates that are below combined TELRIC cost of UNEs, policy response should be to
  - raise residential local service rates (remove subsidy)
  - abandon TELRIC pricing where CLECs not impaired
  - not reduce UNE rates further below incremental cost
  - encourage CLECs to deploy own facilities or seek total service resale

# FCC Has Discretion to Manage Switching Relief in the Public Interest

- Allowing the states to decide the issue in the first instance, or to reach contrary "impairment" determinations, is inconsistent with the FCC's statutory jurisdiction, and would result in 50 states' worth of litigation, lack of regulatory consistency, and uncertainty for investment
- The facts clearly show a lack of impairment
- The FCC should sunset switching UNEs
  - No new UNE-P from Order effective date forward
  - Brief transition period for embedded base (no longer than 6 months)

# Switching Relief Should Not Be Conditioned on Electronic Loop Provisioning (ELP)

- With ELP, AT&T proposes a unique combination of a red herring and a white elephant.
- ELP would:
  - cost $30-50 billion to deploy, capital that could be better used to meet the needs of consumers,
  - freeze out other DSL technologies because it force all ILECs into one mandated technology
- ELP should not be a prerequisite even in low volume areas

# BellSouth Has a Reliable and Well-Tested Process in Place for Hot Cuts

- BellSouth's well-established, well-documented process provides efficient, reliable and timely hot cuts
- Evidence shows that BellSouth's hot cuts are timely performed with minimal disruption to end-users
  - 99.6% completed within 15 minutes
  - Received a trouble report on less than 1% within 7 days of transfer

    (Data from January - April, 2002 for coordinated conversions)
- BellSouth's systems and processes are scalable to meet increased demand
- BellSouth has, for years, efficiently accomplished loop cutovers affecting thousands of customers with minimal disruption or impairment

# As of August 31, 2002, BellSouth had provided 1,277,385 UNE-P arrangements in its nine-state region

| State | Quantity |
|---|---|
| • Alabama | 85,379 |
| • Florida | 459,015 |
| • Georgia | 348,179 |
| • Kentucky | 38,505 |
| • Louisiana | 74,390 |
| • Mississippi | 59,643 |
| • North Carolina | 75,396 |
| • South Carolina | 43,122 |
| • Tennessee | 93,756 |

29% of these UNE-P arrangements were in 50 BellSouth Central offices. The "top ten" central offices are:

| Central office | Quantity |
|---|---|
| • HLWDFLPE | 24,764 |
| • MIAMFLHL | 16,278 |
| • HLWDFLWH | 14,375 |
| • PRRNFLMA | 13,296 |
| • MIAMFLCA | 11,494 |
| • MRTTGAMA | 10,722 |
| • PMBHFLCS | 10,654 |
| • LRVLGAOS | 8,916 |
| • MIAMFLWD | 8,876 |
| • PMBHFLMA | 8,328 |

# UNE-P Facts:

Only the top 7 central offices have greater than 10,000 UNE-P arrangements in service

38% of BellSouth's central offices have less than 100 UNE-Ps in service

The top 76 central offices are located in Florida and Georgia and collectively handle 484,922 UNE-Ps

Of the total UNE-Ps across BellSouth's nine-state region, 56% are for residential customers

CLECs will choose an arrangement other than UNE-P. CLEC's primary options include:

- Conversion to resale
- Conversion to "stand-alone" unbundled loop connected to CLECs' switching or switching provided by a third party
- Conversion to total facility by-pass
- Conversion to a market-priced platform

Whatever method CLECs choose, BellSouth will efficiently handle their conversions.

For conversion to resale, BellSouth will:

- Handle individual cutovers as is done today
- Handle multi-line cutovers as "projects" as is done today

For conversion to "stand-alone" unbundled loop connected to CLEC's switching or switching provided by a third party, BellSouth will:

- Handle individual loop cutovers (including number porting) as is done today
- Handle multiple loop cutovers as "projects" as is done today
- Handle "bulk migration" of large quantities according to a process jointly developed by BellSouth, AT&T, and other CLECs

# For conversion to total by-pass, BellSouth will:

- Handle disconnect orders as it does today
- Handle number porting as it does today

# For conversion to a market-priced platform, BellSouth will:

- Negotiate terms and conditions with interested CLECs
- Amend Interconnection Agreements accordingly
- Convert UNEP arrangements according to those negotiated terms

# Evidence Regarding Actual Marketplace Conditions and Developments in the Law Support Relief from UNE Switching

- The Telecommunications Act requires an impairment analysis
- Examination of the factual record in accordance with instructions of the DC Circuit Court provides compelling support for the FCC to grant relief
- In 1999, Chairman Powell "would have been prepared to leave switching off the unbundling list for the provision of service to all customers in access Zone 1, regardless of their size or type, and regardless of whether the incumbent is providing the 'extended link' or EEL." The evidence for relief in all areas in 2002 is even more compelling:
  - Number of CLEC circuit switches – In 1999: 700 In 2002: 1300
  - EOY 2001 CLEC switches serve local customers in BOC wire centers containing approximately 86 percent of all BOC switched access lines
  - Competition from wireless and cable telephony exists today, and is growing